

77-698

Supreme Court, U. S.

FILED

NOV 11 1977

MICHAEL RODAK, JR., CLERK

In the
Supreme Court
of the
United States

OCTOBER TERM, 1977

RICHARD VAN CURA,

Petitioner.

vs.

PEOPLE OF THE STATE OF ILLINOIS.

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
SECOND DISTRICT

ROBERT R. CANFIELD
The Canfield Law Offices
1100 Rockford Trust Bldg.
Rockford, IL 61101
815 965-7761

Attorney for Petitioner

In the
Supreme Court
of the
United States

OCTOBER TERM, 1977

RICHARD VAN CURA,

Petitioner.

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE APPELLATE COURT OF ILLINOIS,

SECOND DISTRICT

—◆—

Petitioner prays that a Writ of Certiorari issue to review the Order denying leave to appeal entered by the Illinois Supreme Court on September 30, 1977 and the judgment of the Appellate Court of the State of Illinois, Second District, entered on June 8, 1977.

Opinions Below

The Opinion of the Appellate Court of the State of Illinois, Second District, First Division, is reported in 7 Ill. Dec. 403, 364 N.E. 2d 564.

Jurisdiction

The Order of the Illinois Supreme Court denying the Petition for Leave to Appeal was entered on September 30, 1977 and the judgment of the Appellate Court of the State of Illinois, Second Judicial District, affirming the judgment of the Circuit Court of Ogle County, Illinois was entered on June 8, 1977; a copy of the Opinion of the Appellate Court is appended and marked "Appendix A." The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

Questions Presented

Whether the interpretation of the State statutes under which petitioner was prosecuted resulted in a denial of due process of law in violation of the Constitution of the United States.

Constitutional Provisions and Statutes Involved

The Constitutional provisions involved are the "Due Process" clause of the Fifth Amendment and the 14th Amendment of the United States Constitution.

The statutory provision in issue is Illinois Revised Statutes (1973), Chapter 95-1/2, paragraph 6-301. A copy of this provision is attached to this petition as "Appendix B."

A statutory provision under the Illinois Criminal Code which must be considered in Illinois Revised Sta-

tutes, Chapter 38, Section 4-9. A copy of this provision is attached to this petition as "Appendix C."

Statement of Relevant Facts

Petitioner, on December 1, 1975, was charged with the offense of Driving a Motor Vehicle While Using a Fictitious License, in violation of Illinois Revised Statutes (1973), Chapter 95-1/2, Section 6-301. A jury trial was conducted before the Honorable Alan J. Cargerman, Associate Judge, Circuit Court of Ogle County, Illinois.

Petitioner's attorneys moved for a verdict of not guilty at the conclusion of the State's case. This Motion was denied and petitioner was found guilty by the jury of the charge.

Petitioner filed a Post-Trial Motion in Arrest of Judgment and a Motion for Acquittal or for New Trial. Among the grounds for these motions, was that the Complaint was fatally defective in that there was no charge of intent or knowledge on the part of the defendant in committing the offense. In addition, the petitioner alleged that the instructions given to the jury were erroneous since they too failed to charge the jury that they must find some intent or knowledge by the defendant in the commission of the alleged offense.

Finally, petitioner alleged that the prosecution, in its case in chief, failed to prove the requisite intent or knowledge by the defendant. The trial judge denied these motions. Both the trial court and the Court of Appeals of the State of Illinois, Second District, held that the offense for which petitioner was charged was one of absolute liability, and there was no burden upon the

prosecution to allege or prove any particular intent by the defendant in committing the offense.

The Appellate Court in its Opinion failed to adequately consider the stringent guidelines placed by the legislature upon the designation of a particular criminal offense as one requiring absolute liability. The Appellate Court strongly considered a case imposing absolute liability upon a defendant charged with a violation of another section of the Illinois Motor Vehicle Code, i.e. Driving After Revocation.

Petitioner appealed to the Appellate Court of the State of Illinois, Second District, and that court affirmed the judgment of the trial court. Petitioner then filed and was denied a Petition for Leave to Appeal to the Illinois Supreme Court.

Reason Why Writ Should Be Allowed

Petitioner respectfully requests that this court should grant his Petition for Writ of Certiorari. This petition raises some very basic concepts of criminal law and procedure and these issues are deserving of this Court's attention and consideration.

Petitioner was charged with a violation of Chapter 95-1/2, Section 6-301 of the Illinois Revised Statutes, and in particular, with violations of sub-paragraphs "one" and "three" of that statutory provision. The Complaint which charged petitioner with said violations merely recited the statutory language and did not charge petitioner with any particular mental state at the time of the alleged offense. Petitioner contends that this was a fatal defect to the Complaint and that his Motion to Dismiss the Complaint at the trial based on this defect

should have been granted.

Furthermore, the State failed during the trial to prove any particular mental state on the part of the petitioner at the time the alleged offense occurred. Petitioner contends that proof of a specific mental state was a necessary element of the State's case and the lack of any evidence as to this element resulted in the State failing to prove its case beyond a reasonable doubt. Also, the trial court admitted certain jury instructions which merely recited the statutory offense verbatim, and once again, there was an utter failure to include the necessity of a finding that petitioner had one of the particular mental states as set out in the Criminal Code of the State of Illinois. Petitioner submits that the admission of these instructions was error.

The basic contention of the petitioner is initially premised on the doctrine that criminal statutes are to be strictly construed in favor of the accused. The violation of the statute in question is a Class A misdemeanor under the laws of the State of Illinois and a person may be incarcerated for up to one year. There is no question that this offense is criminal or penal in nature.

Both the trial court and the Appellate Court considered the statutory provision in issue to be one of absolute liability, and petitioner submits that he was denied due process of law by this erroneous conclusion. The Illinois Revised Statutes, in Chapter 38, Section 4-9, define the use of absolute liability in criminal or penal statutes within the State of Illinois. This statutory provision states that a particular mental state must be proven unless the offense in question does not result in incarceration or by a fine in excess of \$500.00, or if

liability for that particular conduct. Petitioner submits that, as previously stated, an accused found guilty of a violation of this statute can be incarcerated for not more than one year, and therefore, the only basis that the court could impose absolute liability was to find a clear legislative intent to do so. Petitioner submits that no such legislative intent can be found.

The Appellate Court relied upon a case involving another statutory section of the Illinois Motor Vehicle Code, which held that in proving a violation of the offense of Driving a Motor Vehicle with a Revoked License, there was absolute liability and no specific mental state need be alleged nor proven. It is petitioner's contention that the court should have considered the specific statutory section in question. The legislature has indicated that when the issue of absolute liability is raised as to a particular penal statute, that penal statute should be considered on its own merits. As this court can see by the Opinion of the Appellate Court, this was not done.

Both the trial court and the Appellate Court failed to find an adequate legal or legislative foundation supporting their conclusion that a particular mental state was not necessary when prosecuting an individual under this particular statutory provision.

In addition, the Appellate Court failed to strictly scrutinize the given statute in light of the legislature's express limitations on the imposition of absolute liability. The above-stated rulings denied due process of law as guaranteed by the United States Constitution to the petitioner. The petitioner was charged with a criminal offense by means of a fatally defective Complaint. He was found guilty of the offense, though the State clearly

did not prove its case and the jury was presented with instructions which failed to fully set forth the elements of the offense. From beginning to end, petitioner's due process rights were violated.

Conclusion

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,

Robert R. Canfield
The Canfield Law Offices
1100 Rockford Trust Bldg.
Rockford, IL 61101

Attorney for Petitioner

APPENDIX A

76-238

UNITED STATES OF AMERICA

State of Illinois)
Appellate Court) ss:
Second District)

At a session of the Appellate Court begun and held at Elgin on the 6th day of December, in the year of our Lord one thousand nine hundred and seventy six, within and for the Second District of Illinois:

Present: Honorable L. L. RECHENMACHER, Presiding Justice
Honorable GLENN K. SEIDENFELD, Justice
Honorable WILLIAM L. GUILD, Justice
Honorable JAMES E. BOYLE, Justice
Honorable WILLIAM R. NASH, Justice
Honorable ALFRED E. WOODWARD, Justice
LOREN J. STROTZ, Clerk
WILLIAM A. KLUSAK, Sheriff

BE IT REMEMBERED, that afterward, to wit:
On June 8, 1977 the Opinion of the Court was filed in the Clerk's office of said Court, in the words and figures following, viz:

No. 76-238

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE)
STATE OF ILLINOIS,)
Plaintiff-Appellee,) Appeal from the Circuit
) Court for the 15th Judi-
v.) cial Circuit, Ogle County,
) Illinois.
RICHARD VAN CURA,)
Defendant-Appellant.)

MR. JUSTICE BOYLE delivered the opinion of the court:

The defendant, Richard Van Cura, was convicted of the offense of unlawful use of driver's license (Ill. Rev. Stat. 1973, ch. 95-1/2, par. 6-301) by a jury in Ogle County, Illinois. He appeals, asserting that the complaint failed to allege a knowing or intentional act, or any mental state, which, defendant contends, is required for the violation.

The facts are that defendant, Van Cura, was notified by the Illinois Secretary of State that a previous revocation of Van Cura's driver's license was terminated and that he was eligible to reapply for a driver's license. Defendant contends he went to Springfield and applied, but was told by letter that he must file proof of financial responsibility, which he did. It then developed that there were outstanding bond forfeitures which precluded a full-purpose driver's license being issued, but which would not preclude a restricted driver's license. Defendant contends that he received a restricted driver's license in the mail some months later and that this is the document which gives rise to the instant case.

The State called as a witness the Supervisor of Restricted Driver's License Section of the Illinois Secre-

tary of State's Office, who testified that the restricted license was not issued by that office and that the "license" had several material differences which made it conclusive to him that it could not have been so issued. Among other differences, the non-repeating sequential serial number was that of another restricted driver's license issued to an entirely different person, and a copy of that other restricted driver's license was admitted into evidence.

The restricted driver's license purportedly issued to Van Cura contained restrictions as hours, area and purposes of driving and bore a printed signature of the Secretary of State, but the Supervisor-witness testified that it was not typed in the Secretary of State's Office.

The jury found the defendant guilty, and the court sentenced him to 364 days in the county jail.

Defendant's position that intent or knowledge is an essential element in a charge of unlawful use of driver's license is not well taken. While no cases have interpreted this precise statute (Ill. Rev. Stat. 1973, ch. 95-1/2, par. 6-301), it is well settled that one may be guilty of an offense without having knowledge or intent if the statute defining that offense clearly indicates a legislative purpose to impose absolute liability for the conduct described. (People v. Foster (1961), 32 Ill. App. 2d 462, 178 N.E. 2d 402.) In cases of driving a motor vehicle while operator's license is revoked (Ill. Rev. Stat. 1973, ch. 95-1/2, par. 6-303) there is absolute liability. As such, mental state as defined in Ill. Rev. Stat. 1973, ch. 38, pars. 4-3 through 4-7, is not part of the offense. In People v. Espenscheid (1969), 108 Ill. App. 2d 107, 111 249 N.E. 2d 866, 868, the court stated:

"The only intention necessary to render a

person liable to a penalty for a violation of the automobile law is the doing of the act prohibited."

Similarly, in another case involving driving while operator's license is suspended, the court said:

" * * * The defendant's intent, knowledge, moral turpitude or motive is immaterial on the question of guilt. The only intention necessary to render one liable to a penalty for violation of the automobile law is the doing of the act prohibited." People v. Strode (1973), 13 Ill. App. 3d 697, 698, 300 N.E. 2d 323, 325. (See also People v. Witovet (1974), 22 Ill. App. 3d 375, 317 N.E. 2d 292.)

There is no merit to defendant's interposed defense of lack of mental state. Accordingly, his raised objections to two instructions on that subject are without merit, and we, thus, do not reach the procedural question of whether that instructions issue was properly preserved for review.

Defendant has argued that there was an incumbency on the State to prove exactly how defendant came into possession of the fictitious driver's license. This position is erroneous, of course, and since the elements of the offense were proved beyond a reasonable doubt, does not warrant discussion.

The judgment of the circuit court of Ogle County is affirmed.

JUDGMENT AFFIRMED.

SEIDENFELD and NASH, JJ., concur.

Illinois Revised Statutes 1973, Chapter 95-1/2,
Paragraph 6-301:

"6-301. Unlawful use of License or permit

It is a misdemeanor for any person:

1. To display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, or fraudulently altered license or permit;
2. To lend his license or permit to any other person or knowingly allow the use thereof by another;
3. To display or represent as his own any license or permit not issued to him;
4. To fail or refuse to surrender to the Secretary of State, upon his lawful demand, any license or permit which has been suspended, revoked or cancelled;
5. To permit any unlawful use of a license or permit issued to him;
6. To submit to an examination or to obtain the services of another person to submit to an examination for the purpose of obtaining a drivers license or permit for some other person; or
7. To do any act forbidden or fail to perform any act required under this Act, unless such violation is declared to be a felony by this Act or any other law of this State;
8. To possess or sell any blank license or

permit.

P.A. 76-1586, § 6-301, eff. July 1, 1970."

APPENDIX C

"4-9. Absolute Liability

A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in Sections 4-4 through 4-7 if the offense is a misdemeanor which is not punishable by incarceration or by a fine exceeding \$500, or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

Laws 1961, p. 1983, § 4-9, eff. Jan. 1, 1962."